

IN THE HIGH COURT OF CHHATTISGARH AT BILASPURW.P. No. 3632/2005PETITIONER

Niranjan Lal Agrawal, S/o. Late
C.R. Agrawal, Aged about 64
years, Proprietor of M/s. Niranjan
Lal Agrawal, Tulsi Marg, Korba
(C.G.)

VERSUSRESPONDENTS

1. South Eastern Coalfields Limited,
(Subsidiary of Coal India Limited)
Contract Management Cell,
S.E.C.L. Bhawan, Seepat Road,
Bilaspur (C.G.)
2. Chairman-cum-Managing Director,
S.E.C.L. Bilaspur (C.G.)
3. Chief General Manager (C.M.C.)
S.E.C.L. Bilaspur (C.G.)

WRIT PETITION UNDER ARTICLE 226/227 OF THE
CONSTITUTION OF INDIA



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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	8-8-2005 Heard Mr. Kishore Bhaduri, counsel for the petitioner, on admission. The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India, questioning the propriety of tender notice dated 8-6-2005 (Annexure P-1) issued by the Chief General Manager, South Eastern Coalfields Limited, Bilaspur, whereby the C.G.M. has invited applications from eligible contractors for transportation of coal to Gevra Road Railway siding from (a) Gevra CHP/FB bunker, lead 10 Kms., (b) Dipka CHP/FB bunker, lead 13 Kms. "as and when required basis" including opening of bunker chute and cleaning spillage coal below the bunker. Minimum handling required: 13,700 tonnes per day. Tenderers are to quote rates separately for each sub work. L-1 tenderer will be arrived on the basis of total value of work. Experience criteria specified in the tender notice is as under: - "To qualify for award of the contract, each bidder (in its name) should have in the last five years: - Achieved a minimum financial turnover (in similar nature of works only) of 2 (two) times the updated value of estimate of this work. - Satisfactorily completed as a prime contractor of at least one similar work of value not less than 60% of the estimated value of this work. - Evidence of possessing adequate working capital (at least 20% of the value of this work) inclusive of access to lines of credit and availability of the other financial resources to meet the requirement. - Ownership of a fleet of minimum 1/3rd of the tipping trucks/trucks and equipments required for the work."	

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	The petitioner in this petition had particularly questioned the conditions a, b & c above on the ground that same are arbitrary and not been incorporated in a transparent manner as to how the respondents have arrived at in fixing the above experience criteria. The petitioner's case is that he is engaged in coal transport for the last 33 years and he used to bid in the tender for the last 33 years in the SECL, Bilaspur, for transportation of coal and also for wagon loading. At present, the respondents have invited tender vide Annexure P-1. The respondents Company while floating the tender joined transportation i.e. one from Gevra and one from Dipka coal siding to Gevra Road Railway siding. Prior to this there had been always a separate tender for transportation of coal from each railway siding individually. This combination of clubbing of two sides adversely affected the turnover clause of the contractors, because of the fact that the contractors handling one siding at a time cannot fulfill the turnover clause to two club siding. This clause therefore, may help and will help the tenderers who have handled coal outside the local limits and indirectly will repulse the local tenderers on the criteria of turnover. Mr. Kishore Bhaduri, learned counsel for the petitioner argued that the experience criteria clauses (a), (b) and (c) are arbitrary and the same have not been arrived at in a transparent manner. Prior to this, transportation of coal from Gevra and Dipka mines were always separate and separate tenders were being invited. However, this year, the respondents have clubbed both the mines and increased the experience criteria on account of which the petitioner is not able to satisfy the conditions of experience criteria namely, (a), (b) & (c), and that has no reasonable nexus with the objective to be achieved, therefore, same are liable to be quashed.	

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	In this connection, in the matter of Tata Cellular vs. Union of India reported in AIR 1996 SC 11, the Hon'ble Apex Court has held that "the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favoritism". It has been further held that "the terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract". Again, in the matter of Monarch Infrastructure (P) Ltd. vs. Commissioner, Ulhasnagar Municipal Corporation and others reported in (2000) 5 SCC 287, it has been held that the terms and conditions in the tender are prescribed by the Government bearing in mind the nature of contract and in such matters the authority calling for the tender is the best judge to prescribe the terms and conditions of the tender. It is not for the Courts to say whether the conditions prescribed in the tender under considerations were better than the one prescribed in the earlier tender invitations. Again, in the matter of Directorate of Education and others vs. Educomp Datamatics Ltd. and others reported in 2004 AIR SCW 1505, the Court held that the terms of invitation to tender are not open to judicial scrutiny the same being in the realm of contract. The Government must have a free hand in setting the terms of the tender. It must have reasonable play in its joints as a necessary concomitant for an administrative body in an administrative sphere. The Courts would interfere with the administrative policy decision only if it is arbitrary, discriminatory, mala fide or actuated by bias. It is entitled to pragmatic adjustments, which may be called for by the particular circumstances. The Courts cannot strike down the terms of the tender prescribed by the Government because it feels that some other terms	

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	in the tender would have been fair, wiser or logical. The Courts can interfere only if the policy decision is arbitrary, discriminatory or mala fide. Therefore, in view of the above settled law laid down by the Apex Court, the terms of tender i.e. the experience criteria can be challenged only if it is arbitrary, discriminatory or mala fide. On this ground, the argument advanced by learned counsel for the petitioner is that prior to the tender notice in question, the respondents used to invite separate tenders for transportation of coal from Gevra and Dipka mines. But, without disclosing the reasons the respondents have clubbed both the mines, invited tenders and thereafter, the experience criteria has been increased, on account of which the petitioner is not able to fulfill the said criteria. As has been mentioned above, unless the petitioner is able to bring on record showing the arbitrariness, discriminatory treatment or mala fide of the respondents, the experience criteria cannot be interfered automatically being high value or clubbing two mines for transportation together can be said to be arbitrary. During the course of arguments, learned counsel argued that on account of insertion of this experience criteria, only three tenderers including the petitioner and two other Ex-Servicemen companies have put in their tenders. From the terms it seems that this has been done in order to favour those two companies. Merely, advancing arguments by saying that the two grounds have been clubbed in order to favour the Ex-Servicemen companies without placing any material on record or showing any circumstance by which it can be inferred that the respondents have increased the criteria and clubbed both the mines for transportation together in order to favour those Ex-Servicemen companies, it cannot be held that the said clubbing has been	

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Soma	done in order to favour those companies. Those companies belong to Ex-Servicemen personnel. There is every chance that the respondents might have thought in dealing with one person in transportation of both the mines instead of dealing with more than one person. Therefore, I am of the opinion that the petitioner has not been able to make out a prima facie case showing arbitrariness, discriminatory behaviour or mala fide of the respondents in fixing the said experience criteria. As such, I am of the opinion that the petitioner's petition is liable to be dismissed, and it is accordingly, dismissed, at the admission stage itself. Consequently, M.(W.)P.No.3058/2005 and I.A.No.6875/2005 stand disposed of.	Sd/- L.C. Bhadoo Judge